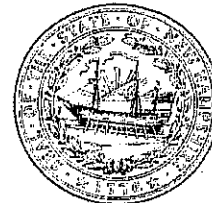




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



Rep. D.L. Chris Christensen, Chairman

Oil Fund Disbursement Board

January 7, 2010

The Honorable Judith T. Spang, Chairman
House Resources, Recreation and Development Committee
Room 305
Legislative Office Building
Concord, New Hampshire 03301

**SUBJECT: HB 1292, Relative to Underground Storage Tank Facility Permits,
Compliance, and Cleanup Fund Eligibility**

Dear Chairman Spang:

Thank you for the opportunity to testify in support of House Bill 1292. This legislation addresses a number of statutory changes that the Department of Environmental Services (DES) and Oil Fund Disbursement Board (Board) believe are important for efficient and effective program operations, and which benefit New Hampshire citizens. None of these changes will increase program operating costs. If enacted into law, House Bill 1292 would accomplish the following:

1.) RSA 146-C provides authority for the regulation of underground storage tank (UST) facilities by DES, including issuance of UST facility installation/operating permits. The bill removes the last sentence in RSA 146-C: 4, II, which states that UST permits are valid for five years, and thus necessitates that DES renew permits according. Removal of this provision will alleviate an unnecessary administrative burden and allow more of our personnel time to be re-directed to more important activities such as UST facility inspections and follow-up to ensure operational compliance. The UST permit renewal provision language dates from a period when permit renewal was accompanied by a \$70 per year permit fee, which was deposited in the General Fund. The permit fee requirement was repealed in 2003, in favor of the initial \$100,000 of annual Oil Pollution Control Fund (RSA 146-A) income being deposited in the General Fund. See Laws of 2003, Chapter 147 (SB 47-FN). Removal of the UST renewal provision will not negate RSA 146-C: 4, I, which requires that facility owners obtain a permit to install and operate USTs.

2.) The bill makes a technical correction to RSA 146-C: 16, I(c) (2), by removing the word "not" in the last sentence of the paragraph, which was a drafting error inadvertently carried through to the final version of the Laws of 2007, Chapter 376 (HB 903-FN). This legislation added authority for DES to "red tag" USTs that are not in operational compliance and thus at risk of leaking. The red tag is a notice affixed to the fill pipe that the UST cannot be filled with product and operated. The red tag provisions of RSA 146-C include a process for removal of the tag, provided the UST operational compliance deficiencies are addressed by the facility owner. It is important to make this technical correction so the meaning of the provision is clear to the regulated community.

3.) The Oil Discharge and Disposal Cleanup Fund (RSA 146-D), Fuel Oil Discharge Cleanup Fund (RSA 146-E), and Motor Oil Discharge Cleanup Fund (RSA 146-F) provide excess insurance coverage for owners of petroleum storage tanks that leak and cause contamination. Under current law, transfer of cleanup fund coverage is limited to purchasers of property where

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the tanks were located and cleanup is not completed, based on the date the tanks were removed from service and closed. HB 1292 removes the coverage transfer limitations based on tank closure dates and allows coverage for owners of land where tanks were located. The closure date transfer limitations were included in the statutes because it was thought a large number of property owners might make claims against the cleanup funds for contamination where a relationship to the operation of storage tanks was not clearly established. Over time this has not been the case, and the tank closure date limitations only serve to discourage property sales and re-development. Further, removal of the coverage transfer limitations will not increase the number of claims to the funds or increase expenses for cleanups. This is because the current law compels the owner of the property where the tanks were located to continue cleanup after the property is sold, providing security to the purchaser and assurances to the lender that cleanup will be completed. With the coverage transfer limitations removed, the same cleanup costs incurred by the original tank/property owner will instead be incurred by the new property owner. Hence, there is no increase in cleanup costs covered by the funds. In addition, under the existing transfer limitations, if the original tank/property owner dies or becomes unwilling to continue cleanup after the property is sold, the purchaser becomes liable for cleanup but does not have the benefit of fund coverage. This is an unreasonable burden to place on the purchaser for contamination they did not cause.

Thank you for your careful consideration of this important bill. If you have questions, please contact Michael J. Wimsatt, P.G. Director of the Waste Management Division at (603) 271-2905 Michael.Wimsatt@des.nh.gov, or Timothy R. Denison at (603) 271-2570 Timothy.Denison@des.nh.gov.

Sincerely,



Rep. D.L. Chris Christensen, Chairman
Oil Fund Disbursement Board

Thomas S. Burack, Commissioner
Department of Environmental Services

cc: Members of the Resources, Recreation and Development Committee
Rep. Leigh Webb
Oil Fund Disbursement Board